

1 Anne K. Edwards (SBN 110424)
2 SMITH, GAMBRELL & RUSSELL, LLP
3 444 South Flower Street, Suite 1700
4 Los Angeles, California 90071
Telephone: (213) 358-7210
aedwards@sgrlaw.com

5 Jeremy D. Richardson (*admitted pro hac vice*)
6 James J. Boland (*admitted pro hac vice*)
7 SMITH, GAMBRELL & RUSSELL, LLP
8 1301 Avenue of the Americas, 15th Floor
New York, New York
Telephone: (212) 907-9700
jrichardson@sgrlaw.com
jboland@sgrlaw.com

10 | Attorneys for Defendant Comfrt, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANNA FISCHER, individually and on behalf of all others similarly situated,

Plaintiff,

V.

COMFRT, LLC; a Florida limited liability company; and DOES 1 to 10, inclusive,

Defendants.

Case No. 2:25-cv-01574 CAS

**COMFRT, LLC'S NOTICE OF
MOTION AND MOTION TO
DISMISS FIRST AMENDED
CLASS ACTION COMPLAINT
AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

**SUPPORTING DECLARATION
OF PATRICK McGILL (FILED
CONCURRENTLY)**

Judge: Hon. Christina A. Snyder
Date: June 30, 2025
Time: 10:00 a.m.
Crtrm.: 8D

Complaint Filed: February 24, 2025
Trial Date: None Set

1 TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 30, 2025 at 10:00 a.m., or as soon
3 thereafter as this matter may be heard, Defendant Comfrt, LLC will and hereby
4 does move this Court for order dismissing the First Amended Class Action
5 Complaint for: (i) violation of California's Unfair Competition Law, Cal. Bus. &
6 Prof. Code §§ 17200, *et seq.*; (ii) violation of California's False Advertising Law,
7 Cal. Bus. & Prof. Code §§ 17500, *et seq.*; and (iii) violation of the California Legal
8 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, filed by Plaintiff Anna Fischer,
9 individually and on behalf of all others similarly situated, pursuant to Rules
10 12(b)(1), 12(b)(6) and 9(b) of the Federal Rules of Civil Procedure.

11 Comfrt asserts that Plaintiff lacks standing under Article III of the U.S.
12 Constitution to bring this action; that even if the Plaintiff had standing, the claims
13 should be dismissed with prejudice because Plaintiff has not plausibly alleged that
14 she suffered any injury proximately caused by Defendant's alleged conduct and
15 fails to plausibly allege claims for injunctive relief, disgorgement, restitution
16 and/or damages under the legal theories asserted.

17 **L.R. 7-3 STATEMENT**

18 This motion is being filed following conferences of counsel pursuant to L.R.
19 7-3, which took place on May 2, 2025, and May 23, 2025. The first conference
20 took place via Zoom and the second via conference call. In attendance at the first
21 conference were Kevin Cole on behalf of the Plaintiff, and James Boland, Patrick
22 McGill and Jeremy Richardson on behalf of the Defendant. Attending the second
23 conference were Blair Castle for the Plaintiff and James Boland and Ian
24 Dankelman for the Defendant. In both conferences, Counsel discussed that
25 Defendant intended to file a motion to dismiss the relevant Complaints pursuant to
26 Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6), explaining the grounds for
27 the motion. In the May 23, 2025, conference, Counsel discussed the fact that
28 Defendant's arguments were set forth in detail in Defendant's May 12, 2025,

1 motion to dismiss Plaintiff's initial Complaint and memorandum, and that those
2 same arguments applied with equal force to Plaintiff's First Amended Complaint.

3 DATED: May 30, 2025

Respectfully Submitted,

4 */s/ James J. Boland*

5 Anne K. Edwards (SBN 110424)
6 SMITH, GAMBRELL & RUSSELL, LLP
7 444 South Flower Street, Suite 1700
8 Los Angeles, California 90071
Telephone: (213) 358-7210
aedwards@sgrlaw.com

9 Jeremy D. Richardson
(*admitted pro hac vice*)

10 James J. Boland
(*admitted pro hac vice*)

11 SMITH, GAMBRELL & RUSSELL, LLP
12 1301 Avenue of the Americas, 15th Floor
New York, New York
Telephone: (212) 907-9700
jrichardson@sgrlaw.com
jboland@sgrlaw.com

15 *Attorneys for Defendant Comfrt, LLC*

TABLE OF CONTENTS

	Pages(s)
1 TABLE OF AUTHORITIES	iii
2 INTRODUCTION	1
3 BACKGROUND	2
4 A. Fischer's Attempt to Circumvent the Pre-Suit Notice Requirements 5 Under the CLRA	2
6 B. Fischer's First Amended Complaint	5
7 ARGUMENT	8
8 I. THIS LAWSUIT SHOULD BE DISMISSED FOR LACK OF SUBJECT 9 MATTER JURISDICTION.....	8
10 A. Fischer Lacks Article III Standing to Pursue Any Claims Against 11 Comfrt Based on Her March 6, 2024, Purchase.....	9
12 B. Fischer's Request for "Injunctive Relief" Does Not Give The Court 13 Jurisdiction Over This Lawsuit	11
14 II. FISCHER'S FIRST AMENDED COMPLAINT FAILS TO STATE 15 VALID CLAIMS FOR RELIEF AGAINST COMFRT	13
16 A. All of Fischer's Claims Fail Because Fischer Has Not Plausibly 17 Alleged Any Injury Proximately Caused by Comfrt's Alleged 18 Conduct.....	15
19 B. Fischer's Claims Fail for Other Reasons as Well	16
20 1. All Counts Fail to State Claims for Injunctive Relief.....	16
21 2. Count I Fails to State a Claim for "Disgorgement" Under 22 California's Unfair Competition Law.....	18

1	3.	Count II Fails to State a Claim for Restitution Under California's False Advertising Law	18
2	4.	Count III Fails to State a Claim for Injunctive Relief or "Actual, Consequential, Punitive, and Statutory Damages" Under the California Consumers Legal Remedies Act.....	19
5	CONCLUSION.....		20
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

	Page(s)
2	
3	Cases
4	<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....13, 14
5	
6	<i>Barber v. Kone, Inc.</i> , 118 F. App'x 276 (9th Cir. 2004).....11
7	
8	<i>Becker v. Skype Inc.</i> , No. 5:12-CV-06477-EJD, 2014 WL 556697 (N.D. Cal. Feb. 10, 2024).....12
9	
10	<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007).....13, 14
11	
12	<i>California v. Texas</i> , 592 U.S. 659 (2021).....8
13	
14	<i>Cetacean Cnty. v. Bush</i> , 386 F.3d 1169 (9th Cir. 2004)
15	8
16	<i>Davidson v. Kimberly-Clark Corp.</i> , 889 F.3d 956 (9th Cir. 2018)
17	11
18	<i>DeNike v. Matthew Enterprises, Inc.</i> , 291 Cal. Rptr. 3d 480 (Cal. Ct. App. 2022).....3, 4
19	
20	<i>Eclectic Props. East, LLC v. Marcus & Millichap Co.</i> , 751 F.3d 990 (9th Cir. 2014)
21	14, 15
22	
23	<i>Evans v. Sleep Number Corp.</i> , No. 1:24-cv-01136-KES-SAB, 2025 WL 1093332 (E.D. Cal. Apr. 11, 2025)
24	15, 16, 18
25	
26	<i>Gagam v. Gagnon</i> , No. 5:22-cv-00680-SSS-SP, 2023 WL 3152298 (C.D. Cal. Mar. 7, 2023)
27	14
28	
29	<i>Jackson v. General Mills, Inc.</i> , No. 18cv2634-LAB (BGS), 2020 WL 5106652 (S.D. Cal. Aug. 28, 2020)
30	13

1	<i>Knievel v. ESPN</i> , 393 F.3d. 1068 (9th Cir. 2005)	17
2	<i>Kokkonen v. Guardian Life Ins. Co. of Am.</i> , 511 U.S. 375 (1994).....	8
4	<i>Krystofiak v. BellRing Brands, Inc.</i> , 737 F. Supp. 3d 782 (N.D. Cal. 2024).....	15
6	<i>Lewis v. Continental Bank Corp.</i> , 494 U.S. 472 (1990).....	10
8	<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).....	8
10	<i>Luman v. Theismann</i> , 647 F. App'x 804 (9th Cir. 2016)	12
12	<i>In re PFA Ins. Mktg. Litig.</i> , 696 F. Supp. 3d 822 (N.D. Cal. 2022).....	18
14	<i>SkinMedica, Inc. v. Histogen Inc.</i> , 869 F. Supp. 2d 1176 (S.D. Cal. 2012).....	18
16	<i>Spokeo, Inc. v. Robbins</i> , 578 U.S. 330 (2016).....	8, 9, 10
18	<i>Stanford v. Home Depot USA, Inc.</i> , 358 F. App'x 816 (9th Cir. 2009)	10
20	<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413 (2021).....	9, 11
22	<i>Vess v. Ciba-Geigy Corp. USA</i> , 317 F.3d 1097 (9th Cir. 2003)	14
24	<i>Wallingford v. Bonta</i> , 82 F.4th 797 (9th Cir. 2023)	10
26	<i>Whitaker v. Tesla Motors, Inc.</i> , 985 F.3d 1172 (9th Cir. 2021)	14
28	<i>Wichansky v. Zoel Holding Co.</i> , 702 F. App'x 559 (9th Cir. 2017)	9

1 **Statutes & Other Authorities**

2	28 U.S.C. § 1332(d)(2).....	11
3	Cal. Civ. Code §§ 1750, <i>et seq.</i>	2, 8
4	Cal. Civ. Code § 1782(a)	2, 9
5	Cal. Civ. Code § 1782(b)	3, 9, 10
6	Cal. Bus. & Prof. Code §§ 17200, <i>et seq.</i>	7, 8
7	Cal. Bus. & Prof. Code §§ 17500, <i>et seq.</i>	8
8	Fed. R. Civ. P. 8(a)(2).....	13
9	Fed. R. Civ. P. 12(h)(3).....	11
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

INTRODUCTION

One of the primary purposes of the California Consumer Legal Remedies Act (“CLRA”) is to avoid litigation by encouraging parties to resolve disputes privately without litigation. Thirty days before any lawsuit for damages may be filed, the statute requires a consumer who believes she has been harmed by one of the Act’s offending practices to notify the person who allegedly committed those practices and demand that the person take corrective action to remedy the consumer’s alleged harm. If the person does so, the consumer is barred from maintaining any action for damages under the Act.

Anna Fischer’s lawsuit against Comfrt, LLC is a transparent attempt to circumvent the CLRA. Fischer’s counsel first sent Comfrt a pre-suit CLRA notice that did not identify Fischer, thus preventing – by design – Comfrt from taking any of remedial actions permitted and encouraged under the CLRA before a lawsuit was filed. After Comfrt explained that the notice was patently deficient, on February 24, 2025, Fischer did two things: (i) filed this lawsuit; and (ii) sent a proper CLRA notice disclosing Fischer’s identity. Again, the purpose was to prevent Comfrt from taking any of the remedial actions encouraged by the CLRA before a lawsuit was filed.

Despite Fischer’s gamesmanship, Comfrt responded to Fischer’s notice pursuant to the CLRA and fully remedied Fischer’s claimed harm. As a result, Fischer no longer has any injury-in-fact that is fairly traceable to any offending conduct by Comfrt. Fischer therefore lacks Constitutional standing to assert claims against Comfrt in this lawsuit, and this action should be dismissed for lack of subject matter jurisdiction pursuant to Fed. R. Civ. 12(b)(1).¹

¹ As explained below, even if Fischer retained standing under Article III, the First Amended Complaint fails to plausibly state claims against Comfrt and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

BACKGROUND

A. Fischer's Attempt to Circumvent the Pre-Suit Notice Requirements Under the CLRA

This lawsuit effectively began before Fischer’s initial Complaint was filed on February 24, 2025.

On February 4, 2025, Fischer’s counsel sent a letter to Comfrt. McGill Decl. ¶ 3, Ex. 1. That letter purported to “serve as Notice under [the CLRA], California Civil Code §§ 1750, *et seq.*, and Civil Code § 1782,” notifying Comfrt of alleged violations of the CLRA. *Id.* Section 1782 requires a consumer asserting a violation of the CLRA to notify the person alleged to have committed the offending practices and demand that person “correct, repair, replace, or otherwise rectify the goods or services” alleged to violate the Act at least thirty (30) days prior to commencing an action for damages under the statute. Cal. Civ. Code. § 1782(a). The February 4, 2025, letter purported to set forth alleged violations of the CLRA by Comfrt, “demand[ing] that [Comfrt] remedy such violations within thirty days of [Comfrt’s] receipt of this letter.” *Id.*

The February 4, 2025, letter did not comply with Section 1782. Among other things, the letter did not identify the alleged consumer who supposedly was subject to the alleged CLRA violation described in the letter (the letter referred to the consumer only as counsel’s “client”). The letter also failed to provide the product(s) the “client” allegedly purchased, the date of any supposed purchase(s), or the price(s) allegedly paid. Simply put, despite demanding that Comfrt “remedy such violations within thirty days” of counsel’s letter, that letter provided no information that would permit Comfrt to do so.

As it turns out, that failure was no accident.

On February 19, 2025, Comfrt, through counsel, responded to counsel's letter by email. McGill Decl. ¶ 4, Ex. 2. Citing the February 4, 2025, letter's failure to identify the alleged consumer on whose behalf it was sent or any of the

1 details of that consumer's alleged transaction with Comfrt (product, price, date,
2 etc.), Comfrt told counsel that the letter did not satisfy the pre-suit notification
3 requirements of Section 1782 of the CLRA. *Id.*

4 Within five minutes, counsel responded. McGill Decl. ¶ 5, Ex. 3. Instead
5 of suggesting that the omissions Comfrt identified were somehow inadvertent or
6 otherwise the product of oversight, counsel admitted:

7 Our drafting was very deliberate. We did not include those details due
8 to the concern your client would attempt to refund our client to
9 (improperly) pick off a CLRA plaintiff.

10 *Id.*

11 There nothing "improper" about a merchant providing a remedy – be it a
12 refund or some other type of corrective action – to a complaining consumer under
13 the CLRA. Section 1782 expressly provides that "no action for damages may be
14 maintained under Section 1780 if an appropriate correction, repair, replacement,
15 or other remedy is given, or agreed to be given within a reasonable time, to the
16 consumer within 30 days after receipt of the notice." Cal. Civ. Code § 1782(b).
17 Contrary to counsel's emails, one of the purposes of this provision is to "[a]void[]
18 litigation when appropriate corrective action has been proffered by the merchant."
19 *DeNike v. Matthew Enterprises, Inc.*, 291 Cal. Rptr. 3d 480, 488-89 (Cal. Ct. App.
20 2022).

21 What *was* "improper" was Fischer's attempt to circumvent the language
22 and purpose of the CLRA, which Fischer effectively conceded she was doing on
23 February 24, 2025. On that day, Fischer, though counsel, finally sent a notice
24 letter that complied with the requirements of the CLRA. McGill Decl. ¶ 6, Ex. 4.
25 But Fischer did so only *after* first filing the Complaint in this lawsuit earlier that
26 same day. *Id.* The clear purpose of this strategy was to, once more, attempt to
27 prevent Comfrt from taking any remedial or corrective action to cure Fischer's
28 supposed complaints before Fischer filed a federal lawsuit against Comfrt – again,

1 in contravention of the express purpose of Section 1782 of the CLRA. *DeNike*,
2 291 Cal. Rptr. 3d at 488-89.

3 Despite Fischer's tactic, Comfrt followed the provisions of Section 1782.
4 On March 24, 2025, within the thirty days allowed by the statute, Comfrt, through
5 counsel, sent a response to the February 24, 2025, CLRA notice letter. McGill
6 Decl. ¶ 7, Ex. 5. The response explained that Comfrt was providing Fischer with
7 a full, complete – and *unconditional* – remedy for her purported claims of CLRA
8 violations. *Id.* Comfrt sent Fischer's counsel a check for \$138.16, which
9 represented a refund of the full purchase price the notice letter claimed Fischer
10 paid for the items she allegedly purchased, \$125, plus interest from the date of
11 that purchase. *Id.* Because Comfrt was providing a full and complete refund of
12 Fischer's purchase, Comfrt also sent counsel a Federal Express package for
13 Fischer to return the items she purchased, with the shipping cost pre-paid.² *Id.*

14 Within 15 minutes of Comfrt's email, Fischer's counsel responded. McGill
15 Decl. ¶ 8, Ex. 6. Admitting yet again that Comfrt providing Fischer with a full and
16 complete remedy “is exactly why we didn’t provide our client’s name in the initial
17 letter,” counsel’s email included a lengthy, pre-prepared diatribe citing a string of
18 inapposite cases and railing against Comfrt’s compliance with Section 1782. *Id.*
19 Significantly, however, counsel’s missive – which was focused on the desire to
20 pursue a case against Comfrt as a purported class action – *never* contested that the
21 remedy Comfrt provided to Fischer fully compensated her for her alleged
22 purchase of Comfrt products, returning her to the position she would be in if she
23 had never purchased those products at all. *See id.*

24

25

26 ² Comfrt also offered to reimburse Fischer for any attorneys’ fees and costs she incurred in
27 connection with the CLRA notice upon submission of appropriate documentation (because
28 Comfrt has no way of knowing what Fischer’s actual fees and costs might be). McGill Decl.
¶ 7, Ex. 5.

1 **B. Fischer's First Amended Complaint**

2 As noted above, rather than follow the pre-suit notification procedures
3 under Section 1782 of the CLRA, Fischer sought to circumvent those procedures
4 by only providing a proper CLRA notice after first filing this lawsuit against
5 Comfrt. To get around the lack of proper notice, Fischer's initial Complaint
6 included a claim under the CLRA but, at least for now, only for purported
7 injunctive relief. Compl. ¶ 85. After Comfrt moved to dismiss that complaint in
8 its entirety, Fischer filed a First Amended Complaint on May 21, 2025 adding one
9 paragraph about Comfrt's response to Fischer's CLRA letter and purporting to
10 assert a claim for damages under the CLRA. 1st Am. Compl. ¶ 86.

11 Like her original Complaint, Fischer's First Amended Complaint is a
12 curiously crafted pleading. The First Amended Complaint spans 33 pages and
13 contains 86 numbered paragraphs/allegations. Yet, after eliminating the
14 conclusory "Nature of the Action" allegations, 1st Am. Compl. ¶¶ 1-6, allegations
15 identifying Comfrt and purported "DOES 1 to 10," *id.* at ¶¶ 8-9, and allegations
16 regarding jurisdiction and venue, *id.* at ¶¶ 10-14, few of the supposed "factual"
17 allegations preceding the "Class Action Allegations" relate to Fischer specifically.
18 Briefly, those allegations are as follows:

19 Fischer alleges that she is citizen of California and resident of Los Angeles
20 County who purchased two items from Comfrt's website from her home on March
21 6, 2024: (i) a pair of sweatpants for \$49; and (ii) a hoodie, which she alleges she
22 purchased for \$69. *Id.* at ¶¶ 7, 27. Fischer alleges that the total amount she paid
23 was \$125, including shipping and taxes. *Id.* at ¶ 7.

24 Fischer alleges that she visited Comfrt's website to shop, browsed the site,
25 and saw that "nearly every item" had a "Reference Price" that was "crossed out"
26 and a "sale price." *Id.* at ¶ 27. Fischer alleges that the price of the sweatpants was
27 "listed as ~~\$75~~ \$49," and the price of the hoodie was "listed as ~~120~~ \$69." *Id.*
28 (emphasis in original). Fischer alleges that she relied on that price as a

1 “representation that the products . . . had in fact been offered for sale, or previously
2 sold, in the recent past at the stated Reference Price.” *Id.* at ¶ 29.

3 The term “Reference Price” is one defined in the First Amended Complaint,
4 *see* 1st Am. Compl. ¶ 16, and the First Amended Complaint uses that term, with
5 and without the capitalized letters, to allege that the price equates to the price at
6 which a retailer such as Comfrt is to have sold a substantial quantity of the
7 products for a reasonable period of time. *See e.g., id.* at ¶¶ 3, 23. Although Fischer
8 alleges that she relied on that price as a “representation that the products . . . had
9 in fact been offered for sale, or previously sold, in the recent past at the stated
10 Reference Price,” *id.* at ¶ 29, the First Amended Complaint alleges no facts
11 supporting such a belief or conclusion about the pricing on the part of Fischer.

12 Nevertheless, Fischer alleges that she believed that the sweatpants and
13 hoodie “were being offered for a significant discount from the Reference Price.”
14 *Id.* at ¶ 29. Contending – “[o]n information and belief” – that the sweatpants and
15 hoodie “were not substantially marked down or discounted, or at the very least,
16 any discount she was receiving had been grossly exaggerated,” *id.* at ¶ 30, Fischer
17 alleges that she “would not have purchased the [sweatpants and hoodie], or at the
18 very least, would not have paid as much as she did, had [Comfrt] been truthful.”
19 *Id.* at ¶ 34.

20 Those are the only arguably factual allegations about Fischer. The rest of
21 the supposedly “factual” allegations in the First Amended Complaint are either
22 broad accusations,³ legal contentions/conclusions (including the elements of legal
23 claims couched as factual allegations),⁴ allegations clearly relating to some
24 research or other work performed by counsel, not Fischer,⁵ or hearsay.⁶ These

25

³ 1st Am. Compl. ¶¶ 1, 3, 16-18, 26.

26⁴ *Id.* at ¶¶ 2, 4, 5, 33.

27⁵ *Id.* at ¶¶ 19-25, 31-32.

28⁶ *Id.* at ¶¶ 35-40.

1 allegations add nothing, and have no relevance, to *Fischer's* claims against
2 Comfrt.

3 Indeed, there are number of facts notably absent from Fischer's allegations.
4 For one, as noted above, although the First Amended Complaint makes a number
5 of claims about what the strike-through "Reference Price" means, including
6 specifically referencing "require[ments]" of the Federal Trade Commission and
7 California law, 1st Am. Compl. ¶ 3, Fischer alleges no facts to suggest that she
8 had such a contemporaneous understanding of that price or any knowledge of FTC
9 requirements or those under California law. Nor does the First Amended
10 Complaint allege facts explaining how or when, between her purchase on March
11 6, 2024, and the first (defective) CLRA notice letter on February 4, 2025, Fischer
12 came to the conclusion that she had been misled based on her supposed
13 understanding of the "Reference Price."

14 More significantly, although contending that she "would not have
15 purchased" the two items at all, or "would not have paid as much as she did," *id.*
16 at ¶ 34, Fischer does not allege facts plausibly supporting either contention. As
17 for the latter, the First Amended Complaint specifically alleges that Fischer
18 purchased the items at prices listed on Comfrt's website. *Id.* at ¶ 27. Fischer does
19 not allege facts showing that those prices were subject to any kind of bartering or
20 negotiation, and thus does not plausibly allege that she "would have," or indeed
21 could have, paid less than those list prices for the two items.

22 As for not purchasing the sweatpants and hoodie at all, Fischer ignores that
23 although she paid the purchase price, in exchange she also received (and currently
24 possesses) the two items at issue. Fischer does not allege facts showing how the
25 prices at which Comfrt sold those products – \$49 and \$69 – compared to the prices
26 of other available sweatpants and hoodies, much less sweatpants and hoodies of
27 comparable quality and aesthetic appeal as those sold by Comfrt. Put another way,
28 Fischer does not allege facts plausibly showing that Fischer did not receive

1 exactly what she paid for – two items with retail values equal to (or even greater
2 than) the \$49 and \$69 that she paid.

3 Instead, based on the few allegations about Fischer outlined above and
4 without any further supporting facts, Fischer asserts three causes of action against
5 Comfrt: (i) violation of California’s Unfair Competition Law (“UCL”), Cal. Bus.
6 & Prof. Code §§ 17200, *et seq.*; (ii) violation of California’s False Advertising
7 Law (“FAL”), Cal. Bus. & Prof. Code §§ 17500, *et seq.*; and (iii) violation of the
8 CLRA, Cal. Civ. Code §§ 1750, *et seq.*

9 **ARGUMENT**

10 **I. THIS LAWSUIT SHOULD BE DISMISSED FOR LACK OF
11 SUBJECT MATTER JURISDICTION**

12 “Federal courts are courts of limited jurisdiction,” possessing “only that
13 power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins.*
14 *Co. of Am.*, 511 U.S. 375, 377 (1994). Article III of the Constitution limits a
15 federal court’s jurisdiction to cases and controversies. *California v. Texas*, 592
16 U.S. 659, 668 (2021) (“The Constitution gives federal courts the power to
17 adjudicate only genuine ‘Cases’ and ‘Controversies.’”). “That power includes the
18 requirement that litigants have standing.” *Id.*; *Lujan v. Defenders of Wildlife*, 504
19 U.S. 555, 560 (1992) (“the core component of standing is an essential and
20 unchanging part of the case-or-controversy requirement of Article III”). To have
21 standing, a plaintiff “must have (1) suffered an injury in fact, (2) that is fairly
22 traceable to the challenged conduct of the defendant, and (3) that is likely to be
23 redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robbins*, 578 U.S. 330,
24 338 (2016), citing *Lujan*, 504 U.S. at 560-61 (1992); *see also Cetacean Cnty. v.*
25 *Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004).

26 Injury in fact – “the first and foremost of standing’s three elements” – is “a
27 constitutional requirement.” *Spokeo*, 578 U.S. at 339. “To establish injury in fact,
28 a plaintiff must show that he or she suffered ‘an invasion of a legally protected

1 interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not
2 conjectural or hypothetical.’” *Id.*, citing *Lujan*, 504 U.S. at 560. To be
3 “particularized,” an injury “must affect the plaintiff in a personal and individual
4 way.” *Id.* To be “concrete,” an injury “must be ‘de facto’; that is, it must actually
5 exist.” *Id.* at 340.

6 As the Supreme Court has held, “standing is not dispensed in gross; rather,
7 plaintiffs must demonstrate standing for each claim they press and for each form
8 of relief that they seek (for example, injunctive relief and damages).” *TransUnion*
9 *LLC v. Ramirez*, 594 U.S. 413, 431 (2021). As the party invoking federal
10 jurisdiction, Fischer bears the burden of establishing each required element of
11 standing. *Spokeo*, 578 U.S. at 338.

A. Fischer Lacks Article III Standing to Pursue Any Claims Against Comfrt Based on Her March 6, 2024, Purchase

Fischer’s lawsuit should be dismissed because Fischer lacks Article III standing to assert any claims against Comfrt based on her March 6, 2024, purchase of Comfrt products. As explained above, the CLRA requires a consumer asserting a violation to notify the alleged wrongdoer and demand that it “correct, repair, replace, or otherwise rectify the good or services” alleged to violate the Act at least thirty (30) days prior to commencing an action for damages. Cal. Civ. Code. § 1782(a). As also explained above, after Fischer sent Comfrt a notice that conformed to the Act’s requirements on February 24, 2025, Comfrt timely (*i.e.*, within 30 days) fully addressed Fischer’s complaint by providing her with an unconditional full refund of her alleged purchase price, plus interest, as well as an unconditional promise to pay her actual attorneys’ fees.⁷ McGill Decl. ¶ 7, Ex. 5.

⁷ Because Comfrt’s Rule 12(b)(1) motion raises a factual attack on jurisdiction, the Court “need not presume the truthfulness of [Fischer’s] allegations and may look beyond the complaint . . . without having to convert the motion into one for summary judgment.” *Wichansky v. Zoel Holding Co.*, 702 F. App’x 559, 560 (9th Cir. 2017) (citation omitted, ellipses in original).

1 As a result of Comfrt's corrective action, Fischer is barred from asserting
2 any claim for her alleged monetary damages under the CLRA. Cal. Civ. Code
3 § 1782(b) ("no action for damages may be maintained under Section 1780 if an
4 appropriate correction, repair, replacement, or other remedy is given, or agreed to
5 be given within a reasonable time, to the consumer within 30 days after receipt of
6 the notice"). But Comfrt's remedy also eliminates Fischer's standing to pursue
7 *any* claims against Comfrt. As the Ninth Circuit has held, a defendant's provision
8 of a complete remedy to a plaintiff in response to a pre-suit CLRA notice
9 eliminates that plaintiff's injury-in-fact and standing under Article III. *Stanford v.*
10 *Home Depot USA, Inc.*, 358 F. App'x 816, 818-19 (9th Cir. 2009).

11 To be sure, Fischer tried to game the system by only sending a proper
12 CLRA notice *after* she had already commenced this lawsuit, no doubt seeking to
13 avoid the consequences under Section 1782(b) and *Stanford* of any remedial
14 action that Comfrt might take in response. But Fischer's ploy fails. Even if the
15 Court were inclined to sanction Fischer's *post-suit* CLRA notice tactic (and it
16 should not), "it is not enough that a dispute was very much alive when suit was
17 filed." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 478 (1990). Article III's
18 "case-or-controversy requirement subsists through all stages of federal judicial
19 proceedings, trial and appellate." *Id.* If "at any point during the proceedings
20 [there] is no longer a 'Case' or 'Controversy' for purposes of Article III," the case
21 is "outside the jurisdiction of the federal courts." *Wallingford v. Bonta*, 82 F.4th
22 797, 800 (9th Cir. 2023) (citing *United States v. Sanchez-Gomez*, --- U.S. ---, 138
23 S.Ct. 1532 (2018)).

24 That is the case here. Fischer has been made whole. She no longer has any
25 "injury-in-fact . . . that is fairly traceable" to the advertising by Comfrt that she
26 challenges in her First Amended Complaint. *Spokeo*, 578 U.S. at 338. Fischer
27 lacks Article III standing to pursue any claims against Comfrt based on her March
28 6, 2024, purchase, and this case should be dismissed for lack of subject matter

1 jurisdiction. *See Fed. R. Civ. P. 12(h)(3)* (“If the court determines at any time that
2 it lacks subject matter jurisdiction, the court must dismiss the action.”).

3 **B. Fischer’s Request for “Injunctive Relief” Does Not Give The**
4 **Court Jurisdiction Over This Lawsuit**

5 In addition to seeking monetary relief from Comfrt, Fischer also purports
6 to seek injunctive relief. *See 1st Am. Compl.* ¶¶ 70-71, 78, 85. Fischer’s request
7 for this relief does not save this Court’s jurisdiction for two reasons.

8 First, this is a diversity case asserting only state law claims based on
9 Fischer’s alleged \$125 purchase. *1st Am. Compl.* ¶¶ 7, 27, 52-85. The only basis
10 alleged for this Court’s subject matter jurisdiction is the Class Action Fairness
11 Act, 28 U.S.C. § 1332(d)(2), based on Fischer’s allegations that “there are over
12 100 members of the proposed class” and that “the total matter in controversy
13 exceeds \$5,000,000.” *1st Am. Compl.* ¶ 10. “Federal jurisdiction is presumed not
14 to exist unless the contrary affirmatively appears.” *Barber v. Kone, Inc.*, 118 F.
15 App’x 276, 278 (9th Cir. 2004) (citation omitted). Whatever merit there may have
16 been to Fischer’s conclusory “amount in controversy” allegation in a case where
17 Fischer has standing to assert claims for monetary relief, there are no “amount in
18 controversy” allegations in the First Amended Complaint to plausibly support this
19 Court’s subject matter jurisdiction under the Class Action Fairness Act over
20 Fischer’s state law claims seeking injunctive relief.

21 Second, Fischer lacks standing to pursue claims for injunctive relief in any
22 event. As noted above, a plaintiff such as Fischer must not only demonstrate
23 standing – *i.e.*, injury-in-fact – for each claim she asserts, but also for each form
24 of relief she seeks. *TransUnion LLC*, 594 U.S. at 431. “For injunctive relief,
25 which is a prospective remedy, the threat of injury must be ‘actual and imminent,
26 not conjectural or hypothetical.’” *Davidson v. Kimberly-Clark Corp.*, 889 F.3d
27 956, 967 (9th Cir. 2018) (citing *Summers v. Earth Island Inst.*, 555 U.S. 488
28

1 (2009)). “Past wrongs” are insufficient. *Id.* “[T]he ‘threatened injury must be
2 *certainly impending* to constitute injury in fact.”” *Id.* (citing *Clapper v. Amnesty*
3 *Int’l USA*, 568 U.S. 398 (2013)) (emphasis in original). “[A]llegations of *possible*
4 future injury are not sufficient.”” *Id.* (emphasis in original).

5 Fischer fails to allege facts plausibly showing any “actual or imminent” as
6 opposed to “conjectural or hypothetical” risk of future harm based on Comfrt’s
7 advertising. For one, Fischer does not allege that she will ever buy another item
8 from Comfrt’s website. The most Fischer alleges that is that she “desires to shop
9 at [Comfrt’s] online store in the future,” 1st Am. Compl. ¶ 34, not that she will
10 ever actually “buy” anything (sweatpants and hoodies are not daily necessities
11 that one would expect to purchase over and over again). Fischer’s “desires to
12 shop” allegation is insufficient to establish any “threatened injury” to Fischer
13 posed by Comfrt’s website, let alone an injury that is “certainly impending.”
14 *Luman v. Theismann*, 647 F. App’x 804, 807 (9th Cir. 2016) (“Because Plaintiffs
15 do not allege that they intend to purchase SBP in the future, they cannot
16 demonstrate a likelihood of future injury.”); *Becker v. Skype Inc.*, No. 5:12-CV-
17 06477-EJD, 2014 WL 556697, at *3 (N.D. Cal. Feb. 10, 2024) (mere assertion of
18 the intention to do something in the future is not sufficient to confer standing).

19 But even putting aside Fischer’s failure to allege an imminent threatened
20 injury, Fischer’s First Amended Complaint establishes that she is perfectly able
21 to determine whether she can rely on Comfrt’s price advertising. A primary reason
22 Fischer alleges that Comfrt’s advertising was supposedly false is because when
23 she “browsed the site” she “observed that nearly every item offered had a
24 Reference Price that was crossed out and a sale price.” 1st Am. Compl. ¶ 27. In
25 support, Fischer incorporates Comfrt’s website into her First Amended Complaint
26 to show how “images captured on February 23, 2025” from that website show that
27 “[a]ll or nearly all [Comfrt] products on the site are represented as being
28 significantly marked down from a substantially higher or original reference price,

1 which is prominently displayed to the consumer as being the supposed original
2 price.” *Id.* at ¶ 16.

3 If Fischer was able to “browse” Comfrt’s website on February 23, 2025, to
4 determine whether the pricing appeared problematic and thus unreliable, she can
5 certainly do so if she “desires to shop” on that website in the future. Fischer
6 therefore lacks standing to assert a claim for injunctive relief for this reason as
7 well. *See e.g., Jackson v. General Mills, Inc.*, No. 18cv2634-LAB (BGS), 2020
8 WL 5106652, at *5-6 (S.D. Cal. Aug. 28, 2020) (plaintiff lacks standing to seek
9 injunctive relief where facts in complaint demonstrate she can determine if
10 advertising is reliable).

11 **II. FISCHER’S FIRST AMENDED COMPLAINT FAILS TO STATE
12 VALID CLAIMS FOR RELIEF AGAINST COMFRT**

13 Under the Federal Rules of Civil Procedure, a complaint must contain “a
14 short and plain statement of the claim showing that the pleader is entitled to
15 relief.” Fed. R. Civ. P. 8(a)(2). A complaint, however, must contain more than
16 “labels and conclusions” or a “formulaic recitation of the elements of a cause of
17 action.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A complaint
18 must plead facts “sufficient to make the claim of unlawful conduct—*i.e.*, that the
19 plaintiff is ‘entitled to relief’—plausible.” *Id.* at 555-556.

20 Factual conclusions are not sufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 679
21 (2009) (“[A] court considering a motion to dismiss can choose to begin by
22 identifying pleadings that, because they are no more than conclusions, are not
23 entitled to the assumption of truth”). Nor are legal conclusions. *Id.* (“While legal
24 conclusions can provide the framework of a complaint, they must be supported
25 by factual allegations”). Only “well-pleaded factual allegations” may be credited
26 in determining whether a complaint “plausibly give[s] rise to an entitlement to
27 relief.” *Id.* “[W]here the well-pleaded facts do not permit the court to infer more
28 than the mere possibility of misconduct, the complaint has alleged—but it has not

1 ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.*, citing Fed. R. Civ. P.
2 8(a)(2).⁸

3 As the Ninth Circuit has recognized, “[t]aken together, *Iqbal* and *Twombly*
4 require well-pleaded facts . . . that plausibly give rise to an entitlement to relief.”
5 *Whitaker v. Tesla Motors, Inc.*, 985 F.3d 1172, 1176 (9th Cir. 2021); *see also*
6 *Gagam v. Gagnon*, No. 5:22-cv-00680-SSS-SP, 2023 WL 3152298, at *1 (C.D.
7 Cal. Mar. 7, 2023) (“To state a plausible claim for relief, the complaint must
8 contain sufficient allegations of underlying facts to support its legal conclusions”)
9 (citation omitted).

10 “Establishing the plausibility of a complaint’s allegations is a two-step
11 process.” *Eclectic Props. East, LLC v. Marcus & Millichap Co.*, 751 F.3d 990,
12 995-96 (9th Cir. 2014). First, “a court should ‘identify pleadings that, because
13 they are no more than conclusions, are not entitled to the assumption of truth.’”
14 *Id.* at 996, citing *Iqbal*, 556 U.S. at 1951 (“We begin our analysis by identifying
15 the allegations in the complaint that are not entitled to the assumption of truth”).
16 “Conclusions” to be disregarded include not only express legal conclusions, but
17 also conclusory factual contentions and legal conclusions cast in the form of
18 factual allegations. *Iqbal*, 556 U.S. at 690-81 (conclusory allegations of
19 misconduct are not entitled to presumption of truth); *Whitaker*, 985 F.3d at 1176
20 (“courts need not accept as true legal conclusions or threadbare recitals of the
21 elements of a cause of action, supported by mere conclusory statements”) (citation
22 omitted). Second, after “identifying the allegations in the complaint that are not
23 entitled to the assumption of truth,” *Iqbal*, 556 U.S. at 680, a court should
24 “assume the[] veracity” of ‘well-pleaded factual allegations’ and ‘determine
25

26 ⁸ Counts I and II of Fischer’s First Amended Complaint assert claims for unlawful, unfair and
27 fraudulent practices under the UCL and FAL. 1st Am. Compl. ¶¶ 52-78. Claims alleging these
28 practices sound in fraud and are subject to the heightened pleading requirements of Rule 9(b).
Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1103-04 (9th Cir. 2003).

1 whether they plausibly give rise to an entitlement to relief.”” *Eclectic Props. East,*
2 *LLC*, 751 F.3d at 996, citing *Iqbal*, 556 U.S. at 669.

3 Applying the above rules, even if Fischer retained some measure of Article
4 III standing, and she does not, her First Amended Complaint fails to plausibly
5 state UCL, FAL and CLRA claims against Comfrt in any event.

6 **A. All of Fischer’s Claims Fail Because Fischer Has Not Plausibly
7 Alleged Any Injury Proximately Caused by Comfrt’s Alleged
8 Conduct**

9 Fischer’s First Amended Complaint purports to assert three causes of action
10 against Comfrt: (i) violation of the UCL; (ii) violation of FAL; and (iii) violation
11 of the CLRA. To state a claim under each of these statutes, Fischer was required
12 to allege, among other things, facts plausibly showing that she suffered an injury
13 or damage as a result of the purported practices by Comfrt. See *Krystofiak v.*
14 *BellRing Brands, Inc.*, 737 F. Supp. 3d 782, 799 (N.D. Cal. 2024) (claims for
15 misrepresentation or omission under UCL, FAL and CLRA all require “(1)
16 misrepresentation or omission, (2) reliance, and (3) damages”).

17 All of Fischer’s claims against Comfrt fail for the simple reason that Fischer
18 has not alleged facts plausibly showing that she suffered any injury as a result of
19 the conduct challenged in her First Amended Complaint. Although Fischer alleges
20 (on information and belief) that she was misled by Comfrt’s strike-through pricing
21 at the time that she purchased the products from Comfrt on March 6, 2024, 1st
22 Am. Compl. ¶¶ 27-30, Fischer does not allege facts plausibly showing that she
23 did not receive exactly what she paid for – two items with retail values equal to
24 the prices that she paid. As a result, Fischer has not plausibly pled that she suffered
25 any injury or damages as a result of any conduct by Comfrt.

26 *Evans v. Sleep Number Corp.*, No. 1:24-cv-01136-KES-SAB, 2025 WL
27 1093332 (E.D. Cal. Apr. 11, 2025), is on point. In *Evans*, the plaintiff purchased
28 a mattress from Sleep Number for \$719.20 based on advertising displaying an

1 original strike-through price of \$899. 2025 WL 1093332, at *1. Like Fischer, the
2 plaintiff alleged that the strike-through price was fictitious, “perpetual” “reference
3 pricing,” and that Sleep Number did not in fact offer or sell the mattress for the
4 reference price. *Id.* The plaintiff alleged, like Fischer, that “had she known ‘the
5 truth,’ she would not have purchased the mattress or would have paid less for it.”
6 *Id.* at *2. And also like Fischer, the plaintiff asserted claims against Sleep Number
7 under UCL, FAL and CLRA, as well as for fraud. *Id.*

8 The court dismissed Evans’ claims, including her claims under the UCL,
9 FAL and CLRA. *Id.* at *7-10. The court found that Evans had failed to plausibly
10 allege she suffered any cognizable injury or damage compensable under the
11 various statutes. As the court explained:

12 While there are ample allegations regarding that the strike-through
13 price was not the prevailing market price . . . Plaintiff has pleaded
14 nothing in the way that the price she actually paid for (*i.e.*, damages). . .
15 . . Plaintiff has provided no allegations that the mattress she bought was
16 not in fact worth what she actually paid for it notwithstanding the
17 purported reference pricing.

18 *Id.* at *10.

19 The same is true here. Fischer has made a number of allegations regarding
20 Comfrt’s alleged strike-through pricing and whether it represented a prevailing
21 price for the Comfrt products, but she has not alleged that the sweatpants and
22 hoodie she purchased were not worth, at retail, the \$49 and \$69 that she paid.

23 **B. Fischer’s Claims Fail for Other Reasons as Well**

24 1. All Counts Fail to State Claims for Injunctive Relief

25 For each of the claims Fischer asserts, she purports to seek, among other
26 things, injunctive relief. *See* 1st Am. Compl. ¶ 70 (Count I, UCL), ¶ 78 (Count II,
27 FAL), ¶ 85 (Count III, CLRA). Although phrased in slightly different ways, the
28

1 injunctive relief Fischer seeks in each count is the same: to change the way Comfrt
2 advertises its products with strike-through pricing on its website.

3 Putting aside Fischer's lack of Article III standing to seek injunctive relief,
4 Fischer's First Amended Complaint fails to state a claim for that relief because
5 Comfrt's website, which Fischer cites in her First Amended Complaint and is
6 central to her claims,⁹ has already been modified to explain precisely what
7 Comfrt's strike-through pricing represents. Specifically, the website has a
8 hyperlink for consumers to access the "Details" of the price, which displays
9 Comfrt's "Pricing Policy":

10 Pricing Policy-

11 The "original" or "regular" price displayed on this page is based on a
12 number of factors that include cost, profit margin, expected demand,
13 inventory levels, competition and promotional activity, such as sales
14 and coupons. These prices are reflective of an actual, bona fide price at
15 which the given individual Comfrt product was offered for sale to the
16 public for a reasonably substantial period of time. That means Comfrt
17 offered this product for sale at that price, though we may not have sold
18 the item at that price. So, the savings we show from these prices may
19 not be based on actual sales of the items at the higher price. In addition,
20 some "original" or "regular" prices may not have been in effect during
21 the past 90 days, and intermediate markdowns may have been taken.
22 Limited quantities, while supplies last.

23 Savings Based on Offering Prices, Not Actual Sales.

24

25

26 ⁹ Under the incorporation by reference doctrine, the Court may consider documents and other
27 materials, including Comfrt's website, that are referenced in Fischer's First Amended
Complaint and central to her claims. *Knievel v. ESPN*, 393 F.3d. 1068, 1076-1077 (9th Cir.
28 2005).

1 *See, e.g.*, <https://comfrt.com/products/affirmation-hoodie>. Because Comfrt's
2 website already discloses the details of the strike-through or "reference" price,
3 Fischer fails to plausibly state a claim for injunctive relief.

4 2. Count I Fails to State a Claim for "Disgorgement" Under
5 California's Unfair Competition Law

6 Count I asserts a claim against Comfrt under the UCL, 1st Am. Compl.
7 ¶¶ 52-71, for which Fischer seeks two forms of relief: (i) injunctive relief, *id.* at
8 ¶ 70; and (ii) "disgorgement of all moneys received by [Comfrt] through the
9 conduct described above," *id.* at ¶ 69. Count I should be dismissed because, as
10 explained above, Fischer fails to state a claim for injunctive relief, non-
11 restitutive disgorgement is not a remedy available under the UCL, *In re PFA*
12 *Ins. Mktg. Litig.*, 696 F. Supp. 3d 822, 836 (N.D. Cal. 2022), *SkinMedica, Inc. v.*
13 *Histogen Inc.*, 869 F. Supp. 2d 1176, 1184-85 (S.D. Cal. 2012), and Fischer does
14 not allege that the sweatpants and hoodie were worth less (at retail) than the prices
15 she paid and thus fails to plausibly state a claim for restitution. *See Evans*, 2025
16 WL 1093332, at *7-8.

17 3. Count II Fails to State a Claim For Restitution Under
18 California's False Advertising Law

19 In Count II, Fischer purports to assert a claim under the FAL. 1st Am.
20 Compl. ¶¶ 72-73. As with her UCL claim, Fischer seeks two forms of relief: (i)
21 injunctive relief; and (ii) restitution. *Id.* at ¶ 78 ("Plaintiff requests that this Court
22 order Defendants to restore this money to Plaintiff . . . and to enjoin Defendants
23 from continuing their false and misleading advertising practices . . ."). Like her
24 UCL claim, Count II should be dismissed because Fischer fails to state a claim
25 for injunctive relief and fails to plausibly state a claim for restitution under the
26 FAL. *Evans*, 2025 WL 1093332, at *7-8.

1 4. Count III Fails to State a Claim for Injunctive Relief or “Actual,
2 Consequential, Punitive, and Statutory Damages” Under the
3 California Consumers Legal Remedies Act

4 Count III asserts a claim against Comfrt under the CLRA, 1st Am. Compl.

5 ¶¶ 79-86, again seeking (apparently) injunctive relief and damages, *id.* ¶ 86. This
6 Count should be dismissed because Fischer fails to state a claim for injunctive
7 relief, and as explained above, Comfrt has already refunded Fischer the full
8 amount of her alleged purchase, plus interest.¹⁰ McGill Decl. ¶ 7, Ex. 5. Fischer
therefore no longer has any claim for damages under the CLRA.

26 ¹⁰ Just as the Court may consider Comfrt’s website under the incorporation by reference
27 doctrine, it may also consider Comfrt’s response to Fischer’s February 24, 2025 CLRA letter,
28 which is referred to in the First Amended Complaint and central to Fischer’s claim for damages
under the CLRA. See 1st Am. Compl. ¶ 86; *Knievel*, 393 F.3d. at 1076.

CONCLUSION

For all of the foregoing reasons, Fischer lacks Article III standing to assert any of the claims against Comfrt in the First Amended Complaint. This Court therefore lacks subject matter jurisdiction over this lawsuit, and it should be dismissed pursuant to Fed. R. Civ. 12(b)(1). But even if Fischer had standing, the First Amended Complaint fails to plead plausible claims against Comfrt for any of the relief sought and should be dismissed, with prejudice, pursuant to Fed. R. Civ. P. 12(b)(6).

DATED: May 30, 2025

Respectfully Submitted,

/s/ *James J. Boland*

Anne K. Edwards (SBN 110424)
SMITH, GAMBRELL & RUSSELL, LLP
444 South Flower Street, Suite 1700
Los Angeles, California 90071
Telephone: (213) 358-7210
aedwards@sgrlaw.com

Jeremy D. Richardson
(admitted pro hac vice)
James J. Boland
(admitted pro hac vice)
SMITH, GAMBRELL & RUSSELL, LLP
1301 Avenue of the Americas, 15th Floor
New York, New York
Telephone: (212) 907-9700
jrichardson@sgrlaw.com
jboland@sgrlaw.com

Attorneys for Defendant Comfrt, LLC

1 **L.R. 11-6.2 CERTIFICATE OF COMPLIANCE**

2 The undersigned, counsel of record for Comfrt, LLC, certifies that this brief
3 contains 6,102 words, which complies with the word limit of L.R. 11-6.1.

4
5 DATED: May 30, 2025

Respectfully Submitted,

6
7 /s/ James J. Boland
8 James J. Boland

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Smith, Gambrell & Russell, LLP
444 South Flower Street, Suite 1700
Los Angeles, California 90071

PROOF OF SERVICE

ANNA FISCHER v. COMFRT LLC
Case No. 2:25-cv-01574 CAS-AGR

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 444 South Flower Street, Suite 1700, Los Angeles, CA 90071-2901.

On May 30, 2025, I served true copies of the following document(s) described as

- COMFRIT, LLC'S NOTICE OF MOTION AND MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT – SUPPORTING DECLARATION OF PATRICK McGILL (FILED CONCURRENTLY)
 - DECLARATION OF PATRICK McGILL IN SUPPORT OF COMFRIT, LLC'S MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT
 - (PROPOSED) ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FIRST AMENDED CLASS ACTION COMPLAINT

on the interested parties in this action as follows:

<p>KJC LAW GROUP, A.P.C Kevin J. Cole (SBN 321555) W. Blair Castle (SBN 354085) 9701 Wilshire Blvd., Suite 1000 Beverly Hills, CA 90212 Telephone: 310.861.7797 Email: kevin@kjclawgroup.com</p>	<p><i>Attorneys for Plaintiff</i> ANNA FISCHER</p>
---	--

- **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct and that I am employed in the office of a member of
the bar of this Court at whose direction the service was made.

Executed on **May 30, 2025**, at Los Angeles, California.

/s/ Verastine Mills
Verastine Mills